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March 24, 2023

By ECF

Hon. Philip M. Halpern  
United States District Court  
300 Quarropas Street  
White Plains, New York 10601

Re: Zappier v. Project Veritas et al.  
7:22-cv-06709 – PMH  
Motion To Strike Memorandum

Dear Judge Halpern:

Yesterday the Defendants filed all of the papers, going both ways, addressed to their Motion to Dismiss. As part of that package, Defendant Spadone's attorney, who had submitted "me too," papers previously, submitted his own supplemental Reply Memorandum of Law. See Docket No. 35. In it, he wrote about an issue which was not addressed in the Motion to Dismiss originally filed, or in any pre-motion letter. His Reply discussed whether Defendant Spadone was a proper Defendant under Title VII or the NY Human Rights Law. Given that the issue was not raised in the original motion papers, the submission of a "Reply" Brief on the question was inappropriate, "It is well-established that '[a]rguments may not be made for the first time in a reply brief.' " *Zirotiannis v. Seterus, Inc.*, 221 F. Supp. 3d 292, 298 (E.D.N.Y. 2016) (quoting *Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993)), *aff'd*, 707 F. App'x 724 (2d Cir. 2017).

We move to have Defendant Spadone's Reply Memorandum, which wholly addresses new issues, stricken from the docket sheet.

Respectfully submitted,

/s/ Arthur Z. Schwartz

Arthur Z. Schwartz

cc: All Counsel by ECF